proposition, that there is, in the nature of human society a foundation for the threefold divisions of the *one*, the *few*, and the *many*. If this be taken merely as the enunciation of the proposition, that the various functions of government ought not to be collected into the same hands, it is a safe doctrine. But it is known to have had, in the minds of many, a far more extensive application; and to have led to the adoption of some provisions in most of our forms of government, which may hereafter appear not their most useful parts. On this great topic, we will not now enlarge. We will only state two authorities, deserving the consideration of the reader. Mr Burke argues against the principle, which forms the basis of the senatorial representation of Massachusetts, with great vigor, and, as we think, great success; although some of the arguments, which he presents against that principle, in the French republican constitutions, do not, we own, apply to us. Mr Jefferson has expressed the opinion, that the unlimited negative of the Senate is a defect in the constitution of the United States. We have, however, given more space to this German writer than anything in the nature of his performance requires; and we leave the effectual refutation of it to time and the steady progress of liberty and truth.

ART. V.—*Cuerpo de Leyes de la Republica de Colombia. Tom. I. Comprende la Constitucion y Leyes sancionadas por el primo Congreso Jeneral, en las Sesiones que celebró desde el* 6 *de Mayo hasta el* 14 *de Octubre de* 1821. 4to. pp. 267. Bogotá.

THE constitution of Colombia resembles, in many of its great features, the constitution of the United States. Some of its most valuable provisions are copied almost literally from it. The executive power is confided to an officer bearing the name of President, elected for a limited time; a vice president is chosen to discharge the executive functions, on the death or resignation of the first officer. The legislative power is vested in two branches, each possessing, on all subjects purely legislative, a negative on the proceedings of the other; and both are elected for limited periods. The judicial authority is confided to a se-

parate body of magistracy appointed during good behavior by the Executive, with the advice and consent of the Senate. In these respects, which give the popular representative name and character to the two governments, they are alike, as they are also in many of the minor provisions, designed to give effect to these fundamental articles.

But there is one respect, in which the forms of government established by the two republics is so essentially different, that they cannot be considered as entirely bearing a common character, or a common name. The government of the United States is a confederacy of States, each reserving to itself unlimited powers of legislation on most local subjects, and on all subjects, of which the control has not been clearly surrendered, and maintaining distinct local legislatures for the exercise of these powers; they also have their Executive and Judiciary in full exercise of the ordinary functions of those departments. The federal government has the powers, which are granted by enumeration; these are generally such as apply to foreign relations, and general commerce. The government of Colombia is central, or consolidated. All the powers of legislation are confided to a single central legislature. There is nothing corresponding to the states, or local governments of the northern confederacy. The republic is divided into departments, and has also smaller subdivisions for the purpose of more convenient internal administration, but every officer is indebted for his authority, and owes responsibility, to the great central power, residing in the national metropolis. While the Congress of the one possesses all legislative power not expressly excepted, that of the other has none, which is not granted in a manner equally clear and formal. While the subjects, on which the one can operate, are as numerous and diversified as the wants of civilized society, those of the other are limited and specified. In the constitution of the United States, enumeration grants power; while, in that of Colombia, enumeration fixes the boundaries of a grant otherwise unlimited.

The patriots, who were assembled to frame a government for the Colombian Republic, met at a moment of anxious trial. The enemy was within the country; the patriot troops were unsubdued, but they were undisciplined and unpaid; the treasury was empty, and credit there was none. It may readily be believed, that no men ever assembled under circumstances less favorable to mature deliberation, and where there seemed to be less prospect of a judicious and happy result. From within, they had no

experience but what seemed to guide, and even to drive them to consolidation; from without, they had the light, which the constitution of the United States gave them. They made use of both, in the way in which the sense of pressing danger at home, and the high reputation of the federal constitution, induced them to believe was best for their country. They adopted the plan of a *central government*, borrowing from the constitution of the United States most of the important provisions, which could be engrafted on a government of that form. In some of these provisions, the southern statesmen have made improvements, which might be wisely adopted by the elder republic, while in others, they have manifestly fallen below their great original. These points of difference will form the subjects of some remarks as we proceed.

The form of government, ultimately adopted, was not the object of first preference, with those who guided the revolution in its early stages. Two controlling reasons led them first to the confederate form; the one was the brilliant example of the United States, and the other was the fact, that the confederate form would preserve to the provinces the separate independence, which many of them had declared. The present government was adopted under the firm belief, that the disasters, which had attended the revolutionary efforts, resulted in a great degree from the plan of association among the provinces before in existence, and that similar dangers could be averted only by the formation of a strong single government. Whether this opinion was well founded, or not, can now be no more than the subject of speculation; but to one, who has acquired a tolerably accurate knowledge of the state of things then existing, and particularly of the moral and political condition of the country, it is difficult to resist the conviction, that any other plan, than the one adopted, would have been extremely perilous.

The course, which the revolutionists have pursued from their first revolt, to the adoption of their present constitution, has been a gradual but constant march from the circumference to the centre of a circle. From the idea of independent governments, almost as numerous as the provinces in the country, they have gone successively, under the sense of the necessity of concert, through all the intermediate stages, to the adoption of a central government, and have suppressed all kind of authority not flowing from it. Not only in the countries now forming the Republic of Colombia, but in most other parts of Spanish America, the

first efforts towards independence were made by local, or provincial assemblies, seldom representing more than one or two small provinces, and sometimes not more than a single city. This was the necessary effect of existing circumstances. There was no such interchange of views, or of intelligence, between different parts of the country, as permitted the necessary agreement for assembling a congress of the viceroyalty, or of any large district. All seemed to be acting under one common impulse, yet it was an impulse not produced by concert, but by the simultaneous operation of a great common cause.

The next succeeding effort, after a declaration of independence, was to procure a general meeting of delegates, from the several revolting districts, to maintain the independence, which each had declared separately. But in some cases, in Colombia, each province designed to maintain its independent sovereignty, and to coalesce with others only for the purpose of expelling the common enemy. Entirely in this spirit, and with these views, Cundinamarca, Popayan, Carthagena, and Venezuela, declared themselves independent states. This disposition towards a federal union was universal; but the idea of a federal government, with some of them, extended only to a temporary one, which should expel, or subdue the enemy in the war, and leave to each its independence on the return of peace. An alliance offensive and defensive resembled much more nearly their conceptions of the nature of the connexion to be established, than any known form of government did. The idea of a permanent federal connexion soon succeeded, but with very vague and indefinite views of the nature of that connexion, or of the nature or amount of the power to be surrendered to the general government. The first formal union of the revolted provinces, took place on the seventeenth day of December, 1819, at Angostura, on the Orinoco, eight years after the royal allegiance was disavowed, during which time the war had been raging throughout the country. This was a union between the viceroyalty of New Grenada, and the captaingeneralship of Caracas, or Venezuela. The provinces, composing these two extensive districts, had previously abandoned their views of separate independence, and had become parts of the viceroyalty, or captaingeneralship, of which they were provinces under the ancient government. But this change of views and surrender of sovereignty, on the part of the provinces, were not in every case evidenced by any formal act; it seemed to come from the necessity of things, and they sent

deputies, and received orders from Caracas, or Bogotá, the seats of the new, as well as of the old government, without referring to, or seeming to remember, their solemn declarations of independence and separate government. Indeed, in some cases, no attempt was made towards maintaining that distinct independence, after it was declared by the provincial meetings; the powers of the deputies seemed to cease after that act, and the meetings were dissolved, as if everything was done; in other cases, where there was better concert among the chiefs, or greater confidence in their ability to resist the enemy, the appearance of independent action was longer maintained.

This fundamental act of union, between these two great departments, did not however yet designate the nature of the government to be established by them; it provided only for a temporary government, and the convocation of a general congress to form a constitution for the new republic created by the union. Very few of the chiefs, at that time, entertained views of a government, such has as been since adopted. When the necessity of union first became apparent, the minds of all led them to a confederation of states, or provinces. The example of the United States, and the glorious success of their efforts, had been heard of by all, and was too brilliant not to be admired. The example was recent, successful, and well known. It could not fail to produce a very general confidence, that it would succeed wherever applied. If there were any then, who saw in the different situations of the two countries, and in the different character of the population, any reasons to doubt the success of the same experiment in Colombia, they had but little success in communicating their opinions to the mass of those, who were the principal actors. The great facts only of the North American revolution were known or attended to.

The provinces, in the original renunciation of the royal authority, were influenced not only by a wish to throw off a distant and oppressive allegiance, but some of them by the desire of assuming the power and dignity of self government. The idea of assuming merely a provincial attitude, under any new form, was certainly not the first or favorite one. And although it cannot be affirmed, that a different course would in any case have been pursued, it may be safely asserted, that the zeal, which quickened many of the South American patriots to proclaim independence, under circumstances extremely dangerous to their lives and fortunes, would have been much abated, if the opinion

had prevailed, that they, with their provinces, were to become only parts of an empire, whose metropolis was distant, and in which they could only have a remote and partial share of the power and the honors of government. The time had not then arrived, in which it was possible to believe, that half a dozen provinces could not, without some controlling common authority, act sufficiently in union to sustain themselves against their enemy. All the predictions of defeat and disaster, under a connexion so frail, where the duties of each were loosely defined, and ill understood, were answered by a reference to the success of the United States, and to that confidence in self exertion, which is inspired by valour and patriotism.

Everything connected with the physical aspect of the country seemed to suggest the idea, or indeed impose the necessity, of independent action. Rivers long and broad, mountains lofty, and passable only at few and distant points, with wide spaces of uncultivated and savage territory, had made the inhabitants of the different parts of the country strangers to each other. There never had been, under the former dominion, any of that intimate association between the different provinces, which internal commerce and good roads would have produced, and which would now have contributed to unite the people, and cause them to look upon themselves as members of the same family. The Spanish policy had ever forbidden intercourse between different parts of the colonial dominions. No instance can be adduced, in which the inhabitants of one portion of a country had so little knowledge of the population, resources, or general statistics of any other portion, subject to the same common government, as those of the late dominions of the King of Spain in South America. There was very little communication, either for purposes of internal commerce or social intercourse. It was not believed that a loyal subject had any business away from his home; and no one, unless he was a civil or military officer, was permitted to travel beyond his canton, without the strictest interrogation as to his motives and business. It is, however, probable, that some of those very causes, which at first fostered the idea of separate and independent efforts, arising from the difficulty of communication between remote parts of the country, and the consequent tardiness in the arrival of intelligence, were those which at last demonstrated the necessity of a closer political union, and strengthened the conviction, that unless the disastrous effects of these physical circumstances could be obviated, by the estab-

lishment of a common central power, the patriot forces would be destroyed in detail. At what time the chiefs of the revolution became convinced, that their plan of government must be changed, is not known.

It is obvious, from the speech delivered by Bolivar to the Congress of 1819, that he then contemplated a government somewhat like the one since adopted. Very few, however, if any, of the political or military leaders, came to that conviction by any previous course of reasoning; the misfortunes of defeat, where there was no concert in action, and where hatred towards the enemy had not yet calmed in the chiefs all jealousy of each other, produced at last a general acquiescence in the necessity of forming a common government, which should control and direct the efforts of all. That general acquiescence resulted in the establishment of the present constitution. This happy event did not take place, until ten years after the commencement of the war, marked by alternate victory and defeat.

The Congress of Cucutá, generally denominated the *Constituent Congress*, assembled in the month of May, 1821, and concluded and published the constitution on the 30th of the succeeding August. Of the different opinions entertained by the members, on their first assembling, as to the nature of the political fabric to be erected, there is no written or certain account. It is understood, however, that the members were divided into three parties; first, those who preferred the form afterwards adopted; secondly, those who wished for a federal form resembling that of the United States; and thirdly, those who desired to establish a government somewhat like that, which existed in the United States under the articles of confederation. The advocates for this last scheme were few in number, and composed of such only, as still maintained the opinions common at the commencement of the revolution. It soon appeared, that a large majority favored a central, or single government; and it can hardly be doubted, that in the moral and political state of the country, great wisdom was shown in this opinion. The present constitution was adopted with almost entire unanimity. It was agreed to by many, who preferred the federal system as a permanent one, under the idea that this was necessary, during the continuance of the war, and that the return of peace would enable them to establish a different and more perfect form. To give this opportunity of judging by experience, and under circumstances more favorable for deciding wisely, what form

of government would be best suited to the people, a clause was introduced, which directs that after ten years, 'when all the advantages and inconveniences of the present constitution shall have been discovered, a grand convention of Colombia shall be convoked by the Congress to examine it, or reform it entirely.' *

The example of the United States had a most extensive and happy effect, in diffusing among the people of South America a love of political independence, and a confidence in their ability to maintain it; but it is certain, that the successful issue of the North American revolution, attained under the feeble government of the *Confederation*, had for a time an injurious effect, in the countries now composing the Colombian Republic, as it produced the unhappy and mistaken notion, that a similar result might there be attained under a similar government. This cause unquestionably conduced, with others, to delay the period at which an effective one was adopted.

This part of the great North American example would lead to disaster in every case, in which it should be relied on by *Spanish Colonists*. A serious difficulty would present itself at once, in the ignorance of the practical details of government. In South America, so far from there being any regular legislative body in each province, there was certainly not one individual, who had ever been a legislator, and probably not a dozen, who had ever seen a representative assembly in session. It would have been necessary, not only to institute the general government, but also to create the state governments, and, indeed, to create the materials necessary to constitute them. In North America, it was only necessary to unite the previously existing states by one general tie; in the South, they must have been first made, and then united. It is by no means certain, that these state sovereignties could have been instituted at all, and put in the proper exercise of their functions, during the war; but it is most certain, that with the materials, out of which they must have been formed, the whole machinery would have been of the rudest kind. These newly created legislatures would neither have had the skill, nor the necessary weight with the people, to give effect to their decrees. There were in the

* Despues que una práctica de diez ó mas años, haya déscubierto todos los inconvenientes ó ventajas de la presente Constitucion, se convocará por el Congreso una gran convencion de Colombia, autorizada para examinarla ó reformarla en su totalidad. *Art.* 191.

provinces but few persons, who had any familiarity with the principles or forms of legislation; and most of those, who were at all familiar with the forms of any kind of government, had gone off, or were in arms against the patriots. In the few cases, in which such persons remained, they were objects of distrust rather than confidence. It would have been difficult to create any local authorities, corresponding with the *States* of the North, and entirely impossible to make them correspond in anything but in name.

While this consideration of the subject was conclusive, with the Constituent Congress of Colombia, against the adoption of a government similar to the confederation of 1778, it was as justly conclusive, as things then stood, against a federal government under any form. In North America the only question was, Shall we unite the existing states under one common and federal head, or shall we consolidate them in one central government? But in Colombia there could be no such question; the only one which could be asked was, Shall we first make the states, and then unite them by a confederation? If these local sovereignties had not existed in the North, before the Revolution, nothing could have been more difficult, nor indeed more perilous, than an attempt to create them during the continuance of the war; and it is not likely, that such a design would have been entertained at all before the return of peace. It is not then to be wondered at, nor to be regretted, that the statesmen of Colombia did not attempt, during the raging of a civil war, to create a federal government; an attempt which would have involved the necessity of creating, at the same moment, all those subordinate powers, which, in the United States, had been the growth of two centuries. It must here be noticed, that although several of the provinces, in the territories now composing the Republic of Colombia, had, by meetings of the principal persons, declared themselves independent, still no legislative body, or regular government, was ever formed; in some cases, those who proclaimed independence never assembled again, and in others, they were the representatives only of the capital, while the country, jealous of the little authority assumed by the provincial metropolis, refused to send delegates.

The operation of the government, under its present constitution, has been thus far happy and successful. The public enemy has been expelled, and tranquillity has prevailed throughout the country. From the recent temporary movements in Venezuela

we apprehend no serious consequences. Considering the imbecility of Spain, and the strength of some of the departments of the republic, partial successes might have been expected, and no doubt would have been obtained against the enemy by provincial enterprises, without any form of general government, but final success would unquestionably have been retarded, perhaps endangered; and even yet some of the provinces would probably have been in possession of the Spaniards, if the present government had not been established. With the advantage of this concentrated power, simultaneous and successful efforts have been made against the enemy, at Porto Cabello on the Atlantic, and at Guayaquil on the Pacific, positions more than four hundred leagues distant from each other.

The party in Colombia, denominated the *Federalists*, is numerous, and composed of some of her most intelligent and worthy statesmen; and they look with some anxiety for the arrival of the period, when a convention is to be organized to take the form of government into consideration. All seem to assent to the propriety of letting the subject rest for the constitutional period. A little impatience has been manifested in Venezuela. The citizens of Caracas, who once saw their city the residence of a captaingeneral, and possessed of all the power and privileges of a metropolis, are not wholly reconciled to the condition of being deprived of everything resembling their former political consequence, and are almost universally the advocates of a system of confederated states, or departments. This opinion prevails also in Quito; nor can it excite surprise, that the inhabitants of those departments having cities, once the seats of political power, should not willingly see themselves so completely reduced to provincial insignificance. But if their views have been correctly represented, the system of government preferred by them would be the most unhappy, which could be devised. It is understood to be their favorite opinion, that the state should be divided into three great departments, corresponding with the ancient divisions under the Spanish government, that is, the viceroyalty of New Grenada, the captaingeneralship of Caracas or Venezuela, and the presidency of Quito; and that the chief cities of each should be the seats of the local government. Whatever danger there may be of a separation between the different parts of the republic, this would certainly be fostered and increased by such an arrangement; as thereby three great states, not very unequal in population and territory, would be created.

A more extended subdivision, one which would correspond in some degree with the states of North America, could alone be adopted with safety. In any division, making no more than three distinct departments, each would bear in strength and population too great a proportion to the general government. The difference between the whole and the parts should be much greater. The most judicious statesmen of Colombia think, that there can be no danger of separation, but from Quito or Venezuela, and that such danger would be greatly increased by constituting them single states; they consider it desirable to render them weaker and more obedient members of the confederacy, by subdividing them into several states. It is understood that those of the Federalists, who prefer the more minute division, also prefer to have the government remain in its present form, rather than be changed into one, which should provide for three state governments only.

There are other points of difference between the constitutions of the United States and Colombia, which, although on important subjects, are not such as affect the general character of the governments, like the one just mentioned, but such as may afford interesting matter for examination and contrast.

In the constitutions of both, the power of declaring war is vested in the Congress. This act of sovereign power, involving greater expense of money and of human life, and every way involving greater responsibility than any other, which can be performed by a political assembly, is submitted most wisely to the whole body of the legislature. It was justly thought, that it would be in vain to withhold from the Executive, many of those branches of authority, which all free constitutions concur in denying to it, if this great power, embracing so many minor ones, and frequently producing consequences endangering the permanent happiness of the people, were surrendered to it. But, nevertheless, most of the reasons, which go to show the propriety of confiding to the Congress alone this high act of declaring war, show, as conclusively, that the power of making peace should be lodged in the same hands. Indeed, the one seems almost a necessary consequence of the other. An authority to place the nation in a state of war, and the authority to judge of the propriety of continuing it in that state, seem to be inseparable branches of the same power. The framers of the constitution of the United States have thought otherwise. While they have given the power of declaring war to the Congress, representing

the whole body of those who have to pay and fight, the policy of continuing the war, the treaty making power, as it is called is submitted to another tribunal, to the President and Senate. These, without consulting the House of Representatives, may impose on the nation a peace, and any conditions of peace, which their judgment, or caprice may dictate. And this may be done at any time after the declaration of war, before any of the ends are attained for which it was declared. The merit of superior wisdom and prudence is due to the constitution of Colombia, which submits the ratification of every treaty to the Congress, thereby avoiding the inconsistency of giving to one department the declaration of war, and to another the power of determining the propriety of continuing it; and avoiding also the collisions to which it may be justly feared, this distribution will ultimately give rise. In the whole range of legislation, there can scarcely ever occur any subjects more important, than those usually embraced in treaties. The commerce, the navigation, the entire interests of the nation may be regulated by them; a new direction may be given to the policy of the government, and the dearest interests of the people may be put in jeopardy by the terms of a treaty. A bill for erecting a lighthouse, or establishing a post road, cannot pass, except by the authority of the three branches of the legislature, exercised under its most tardy forms; and yet a treaty, involving more than the legislation of a whole session, is negotiated, concluded, and becomes positively and irrevocably binding on every member of the state, without the assent of his immediate representatives.

When the power of concluding a treaty, and judging of the terms of that treaty, which, when ratified, is the supreme law of the land, is exercised by the Executive, the legislative authority is deprived of one of its most essential attributes. Treaties frequently stipulate for the payment of large sums of money, or express conditions, the fulfilment of which requires new and extraordinary burdens on the people. If the legislature is under a legal or moral obligation, to raise the sums necessary for fulfilling such conditions, then it is deprived of the very power, which all free constitutions have designed to entrust to the legislature only, the power of raising public money, and judging of its disbursement. The constitution of Colombia does not exhibit this inconsistency. By giving to the Congress the treaty making power, it has rendered the whole system simple, safe, and consistent. The same authority, which gives the final ratification to a treaty,

passes the necessary laws for complying with its conditions. There is no resort necessary to one tribunal, to redeem the pledges of the public faith made by another; the case cannot occur, in which the popular branch of the legislature may be called on to comply with the stipulations of a treaty, the time and conditions of which, it may deem utterly hostile to the public interests.

It has been urged by some, that although true wisdom suggests, that we should oppose as many obstacles as possible to a declaration, which changes the attitude of a nation from peace to war, yet in returning to the state of peace, every facility should be given to the ratification of the treaty, by causing the consideration of it to pass under the ordeal of a single tribunal only. This, if true, would apply only to treaties simply of peace, whereas it is well known, that many others are negotiated and concluded, which impose burdens, and create taxes, but little less oppressive than those produced by war. The history of all ages declares to us, that the terms of a peace are frequently regarded as worse than war, and of course lead again to it, by the necessity of getting rid of the terms. But it may also be readily seen, that a war may be prolonged, and a peace, instead of being more easily obtained, may be postponed, by depriving the popular branch of the Congress of all agency in negotiating and ratifying the treaty; for in that way much of its just influence in procuring the treaty, and determining when the true ends of the war have been obtained, is lost. It may be said, that the war cannot be continued against the sense of the House of Representatives, in as much as that body may deny to the Executive the means of carrying it on, and thereby ensure practically its own proper influence in the government; but this would only go to show the superior simplicity and excellence of that constitution, which effects its objects directly, and not by compelling one branch of the legislature to come in collision with another.

No impediment is created in the negotiation of a treaty by multiplying the tests, to which it is to be subjected for its final ratification. The negotiation will be in every case conducted by the executive department, through its diplomatic agents, without any embarrassment from the authorities, which are ultimately to decide upon it. The treaty will be presented to the Congress for their decision, only after it has passed through all the ordinary forms. The language of all treaties declares on the face of them, that they are subject, for their final validity, to the ratifi-

cation of the sovereign power at home; there can be no delusion on the part of either contracting party. All treaties concluded by the authorities of Colombia declare, that they can receive their final obligation only from the assent of the President and Congress. In practice no inconvenience has yet arisen; the Congress has exercised its power of rejection in one case only.

The framers of the constitution of the United States seem not to have given to this high power, that prominent importance, which its true character demands; they seem rather to have considered it as incidental to the executive power, and to have supposed that all the necessary guards were placed, when it was enjoined that the Executive should act only with the advice and consent of the Senate. In the old governments, the ratification of treaties had always been deemed a power peculiarly belonging to the person of the chief magistrate; and the constitution of the United States, while, in requiring the acquiescence of the Senate, it shows an improvement on the ancient usages, does not yet seem to have attached to that power its true character. It was viewed under a different aspect by the statesmen of Colombia; instead of regarding it as a necessary and harmless appendage of the executive authority, they looked upon it as a great, independent power, considering truly, that there was no burden which it might not impose, no surrender which it might not make, nothing which it might not embrace; and measuring its importance in this way, they have guarded it accordingly, by granting its exercise to that authority only, to which is confided the power of legislation, the President and Congress.

There is another provision in the constitution of Colombia, which is deemed valuable as being auxiliary to the principal one. The authority is expressly given to the Congress to require the Executive to negotiate treaties 'of peace.' This clause cannot have any conclusive effect on the formation of the treaty, as the terms of it must at last be submitted to the ratifying power, but it presents an easy and constitutional mode of expressing the sense of the nation, at whose expense the war must be maintained, and for the assertion of whose rights only it ought to be continued. This provision seems to be a very proper and consistent part of the system; it gives an opportunity to one coordinate branch of the government, whose ultimate acquiescence is indispensably necessary for the adoption of the measure, to manifest its readiness to give the necessary concurrence to the negotiation of the other department.

The provision of the constitution of Colombia, declaring the President ineligible beyond a second election, until there has been an interval of one term, merits unqualified praise. An opinion has been entertained, that the political knowledge, and familiar acquaintance with the interests of the state, acquired by long service in office, render the continuance of such individuals as have these opportunities safe and desirable. It has been urged, too, that a proper regard for the stability of public measures, in the system of the administration, should forbid a frequent change in the person of the individual, who is placed at the head of the government, and of course has the control of the administration. But in governments organized as are those of the United States and Colombia, no dangers are to be apprehended to the state, from an unstable or vacillating policy produced by the change of the Executive, after the expiration of two terms or eight years. So far as skill in the high duties of his office, and practical familiarity with the interests of his country, are alleged as reasons for continuing the services of the same person, it may be truly said, that no individual can be elevated to the presidency in either country, without a long course of tuition and service, as a statesman, in the subordinate offices of the government. No splendor of talents, or local character, can avail him in seeking such an elevation, unless he is known to the nation, and known too by such a series of probationary services, as ensure a perfect knowledge of all the interests of his country. No new man can be raised to that dignity. It is not a station, to which he can be elevated to learn his duties, or to acquire the high knowledge necessary for fulfilling them. A deep conviction, that this knowledge has been already acquired, must have previously penetrated the minds of millions of his fellow citizens, on whom his election depends. The presidency will not be given for anticipated merits, nor as an incentive to future acquisitions; it is not barely a capacity to improve, but only a mind already improved and matured, that can be trusted with this station. It is not doubted then, that in every case of the expiration of a constitutional term, there will be many citizens of the republic as well qualified to discharge the duties of the office, as the one who has left it, citizens qualified by a long tuition in the same school of public services. All arguments used to show, that an individual must be continued in the presidency, because he has there acquired qualifications, or a fitness superior to others, are wholly unsound. The practice of the United States de-

monstrates, that no citizen can attain that station without age and long service.

In regard to the stability of public measures, which some think might be endangered by a frequent change of the chief magistrate, it may be asserted, that in a representative government, public measures do not receive their distinctive character from the Executive, nor are they principally dependent for their permanency on that department. The great scheme of political measures, which characterizes the administration, are such, as are suggested by the genius of the government itself, and not by the particular policy of the individual at its head. The views of different men on minor subjects of policy differ, as their degrees of wisdom differ, but the great system is suggested and controlled by the government itself. So far as the policy of the administration of the government can be varied, it is subject to be varied much more by the legislative than by the executive department. It is the legislature, of which the President is a constituent, but not a controlling member, that gives character to the public measures of the government. A President, who does his duty and no more, can only execute the system, of which he may have been an adviser, but which must have been principally instituted by the other department. So long as he shall confine himself within the boundaries of his prescribed duties, he cannot institute any policy in the administration, which may not be pursued and completed by other wise and disciplined statesmen, as well as by himself.

While, then, there are no positive reasons for continuing the same individual in office for a great number of years, there are dangers resulting from it, which render a positive interdiction on the face of the constitution a very high recommendation, and of course the absence of such a provision, a just cause of regret. That the possession of power gives an increased inclination for its enjoyment, and a disinclination to abandon the situation, which ensures that enjoyment, the history of man too unfortunately proves. It is equally true, that the apparent probability of succeeding in attempts to retain it, beyond the legitimate period, excites, if it does not create, the inclination to attempt it. The few cases, which the course of time presents, of rare individuals, who have voluntarily resigned supreme power, under a sense of its burdens, afford no argument against the truth of the general position. These exceptions can be regarded only as ornaments to beautify the page of history.

The long enjoyment of supreme power weans the possessor from popular attachments, breaks that sympathy arising from common feeling and common interest, which he once had from equal association with his countrymen, gives to his mind the habits only of command, and causes it to revolt at the idea of obedience and a private station. When he sees no constitutional barrier to the retention of this power, his good dispositions may induce him to believe, that he can continue to exercise it beneficially for his country, and his bad ones, if he should unfortunately have any, will too certainly come in to delude and excite him. Government itself is rendered necessary, only by the frailty or viciousness of men; and when the constitution of the government, by the omission of a guard, invites or enables an ambitious incumbent to indulge his passion for power beyond its lawful ends, a material defect exists. Political science has invented various expedients to counteract this very natural inclination to acquire, and the too common inclination to abuse and continue power; and none seems so salutary and simple, as one which shall refuse to the possessor such a protracted enjoyment of it, as would enable him afterwards to hold it against the public opinion.

Although, in the American republics, the executive authority is so limited as to embrace only a part of the powers, enjoyed by the supreme magistrate in the monarchies of Europe, still the powers confided to it are necessarily very great; the patronage of the Executive extends to the appointment of all officers in the government; it embraces, either directly or through channels of subordination to be traced to it, the whole annual expenditure of the government. These annual disbursements are already considerable, and if these nations increase in wealth and population, in the proportion which their present prosperity seems to indicate, in a few years the amount of public money to be expended at the will of the President, even for fair and authorized purposes, will be very great. There will be then in the hands of the chief officer of the Executive, a patronage so great, that if used with that design, an influence may be acquired by long enjoyment, dangerous to the liberties of the people, and menacing the true balance of the constitution. It must be remembered, that all the officers appointed by the President, and their numberless dependants, are interested in his continuance in office; many of them certainly would be, and all of them might be, displaced by successful competitors. It may then fairly be as-

sumed, that in a competition of this kind, the great body of the officeholders, and their dependants, would ally themselves in favor of the reelection of the actual occupant. It is impossible to believe, that this state of things would leave the competition equal, or ensure to the disinterested part of the community a fair opportunity of securing the object of their choice. No mode seems so simple, and so certain to avert these consequences, as a provision in the charter of the government, declaring that the same person shall not be eligible after a given number of years. If these apprehensions can be justly entertained in a federal government, like that of the United States, where many of the ordinary branches of executive authority are in the hands of the state functionaries, there certainly would have been danger in permitting the reelection of the President for an indefinite succession of terms in Colombia, where to all the patronage possessed by the President of the United States, he unites that possessed by the governors of the states.

But while the Colombian constitution can boast its superiority over that of the United States, in having this valuable provision for limiting the number of terms in the executive office, another principle of a very different kind has found admission; one not only omitted in the constitution of the United States, but which may be regarded as entirely hostile to the opinions generally received, of the duties and powers of a legislative body in a limited government. It is declared that, 'Congress shall have power to determine whatever doubt may arise upon the meaning of any of the articles of this constitution.' * This is a power which must be considered as particularly objectionable; it would be dangerous with the best, and ruinous with a corrupt Congress. It is but fair to say, that some of the politicians of the United States hold the opinion, that the Judiciary does not possess the power of declaring a law void for its repugnance to the constitution; and the inference seems to be, that the legislature would in that case be the uncontrollable judges, not only of the expediency of the law, but also of its conformity to the constitution. To prevent that utter and general confusion, which would follow, if there was no tribunal to declare whether a law was justified by the constitution or not, it is indisputable that if this power is denied to the Judiciary, then the Legislature must be considered as giving the true construction in passing the law, and all other depart-

* El Congreso podrá resolver cualquiera duda que ocurra sobre la intelijencia de algunos artículos de esta Constitucion. *Art.* 189.

ments, and all the citzens of the state must obey it, until it is repealed.

In the opinion of some statesmen, indeed, this is the only remedy existing in the case of an unconstitutional law. They say that the people must change the law by changing their rulers, but that until this be done, no tribunal can pronounce it void. Of this consequence there can be no doubt, if to the Judiciary is denied that power. But happily these opinions are confined to few. Not only the courts of the United States, but the people have long cherished the safe opinion, that the judicial department does rightfully possess the authority of determining, whether a law passed in its usual forms is permitted by the constitution. This in fact is the only doctrine, which can be tolerated in a limited government; the government would otherwise cease to be limited, as the legislative authority would draw within its vortex all other powers. The boundaries prescribed would cease to be a safeguard, when the authority to be limited is itself the judge of the meaning and extent of the limitation. All restraints upon authority are prescribed, on account of some jealousy of the body to be restrained; but the whole design is frustrated, whenever that body is permitted to judge without control, of the extent or construction of these bulwarks. Even with just men there is a disposition to believe, that public injury will not result from the exercise of power by them, and hence comes the inclination of all bodies to enlarge the sphere of their action, by giving a liberal construction to their own powers in all doubtful cases.

The observations of Mr Jefferson, made to illustrate the defects of the constitution of Virginia, may be well used to show the character of a government, in which the authority of the Legislature is limited only by the opinions or forbearance of those, who exercise it. He says

'All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. It will be no alleviation, that these powers will be exercised by plurality of hands, and not by a single one. A hundred and seventythree despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which

the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason that convention, which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was provided between these several powers.'

'If therefore the Legislature assumes the executive and judiciary powers, no opposition is likely to be made; nor if made, can it be effectual; because in that case they may put their proceedings in the form of an act of Assembly, which will render them obligatory on the other branches. They have accordingly in many instances decided rights, which should have been left to judiciary controversy; and the direction of the Executive, during the whole time of their session, is becoming habitual and familiar. And this is done with no ill intention. The views of the present members are perfectly upright. When they are led out of their province, it is by art in others and inadvertency in themselves; and this will probably be the case for some time to come. But it will not be a very long time. Mankind soon learn to make interested uses of every right and power, which they possess or may assume. The public money and public liberty intended to have been deposited with three branches of magistracy, but found inadvertently to be in the hands of one only, will soon be discovered to be sources of wealth and dominion to those who hold them.'

'Human nature is the same on every side of the Atlantic, and will be alike influenced by the same causes. The time to guard against corruption and tyranny, is before they shall have gotten hold on us. It is better to keep the wolf out of the fold, than to trust to drawing his teeth and talons after he shall have entered.' *

It has been said, that the oath of the legislator, and the right of the people to change their rulers by election, form the legitimate securities against the passage of laws not authorized by the constitution. But the oath of the legislator is never introduced, or relied on, as an effectual, independent guard; it is only considered an auxiliary defence against transgression, operating on the mind of a conscientious, or timid man. From the very nature of an oath, while it gives security, with honorable men, against the wilful perversion of power, it can give none against

* Jefferson's Notes, Chap. xiii. *Constitution.*

their ignorance or inadvertence; and, what is much more important, it gives none in the very cases in which it is most required, in cases of bold and hardened vice. But it frequently may happen, that laws will be passed in violation of the constitution, without any imputation on the honesty or moral purity of the members; political excitement, the violence of party, or sheer inadvertence may produce this result. In those cases, the intervention of another tribunal, where the feelings of the members have not been enlisted in party controversy, whom the angry collisions of popular debate have never reached, whose official situation is permanent and independent, who can have no unworthy motive to abridge or enlarge the powers of the Congress, and whose previous education fits them for judicial investigation, is necessary to declare to the country, whether the true boundaries of granted power have been observed by those, who were entrusted with its exercise. Without the interposition of a firm judicial tribunal, there can be no permanence, or uniformity, in the construction given to the constitution. The legislative body is liable to frequent changes in the persons of its members, and constructions given by one Congress may be frequently changed by the next. The constitution will cease to be stable and certain in its meaning, under the multitudinous and ever varying expounders. What is constitutional now, may no longer be so after the next election. This will be the unavoidable result, without ascribing to the Congress any character but that, which belongs to all numerous representative bodies.

It cannot be admitted, that the power reserved to the people, at their periodical elections, of ejecting their old and electing new rulers, by whom the objectionable law may be repealed, is sufficient to avert the mischievous consequences, flowing from a denial to the Judiciary of the right of declaring it at once unconstitutional and void. The security furnished to the people by the elections in Colombia is distant, and inadequate when applied; it may produce the repeal of the law, but it cannot prevent its present operation and mischiefs. And, moreover, the repeal of a law does not place things in the situation, in which they were before its passage; by the passage of a law, many rights are created or affected in a great number of ways, which must still continue to have an existence, after the law has been stricken from the statute book. Indeed, this consideration alone is sufficient to show the manifold mischiefs springing from the doctrine, that the Judiciary cannot declare void a statute violating the consti-

tution. If this cannot be done, then valid rights can be created by such statutes, which must be enjoyed inviolate, and may continue to be so enjoyed for years after the public sentiment has been pronounced against the violent act, which gave them existence. And it appears from this view of the subject, that the effect of a law upon the interests of society would be precisely the same, whether it were permitted or forbidden by the constitution. For if it be once conceded, that the judges cannot pronounce a statute void in any case, then they must execute every law passed by the legislature and presented to them, until it is repealed by the same authority which enacted it; and this is true even if it should be a bill of attainder, a law manifestly *ex post facto*, or one declaring that there might be a conviction in a trial for treason on the testimony of one witness.

To each house of the Colombian Congress is granted the usual power of punishing or expelling a member for improper conduct. But to this salutary and necessary power, is added one which must be considered pernicious, and subversive of the rights of election. To each branch of the legislature is given, not only the power of expelling a member, but, also, on a vote of two thirds, of declaring him unfit for 'holding any other office of trust or honor in the republic.'* This is a power, which neither the constitution of the United States, nor of any of the states in the Union, has given; in almost every case the power to expel a second time for the same offence is expressly denied. This is denied on the principle, that when the offence or criminal charge is known to the people, and they still think proper to reelect the person expelled, he has then passed the final ordeal; and that no legislative body can disqualify a man for the public service, upon whom the people have passed their sentence of approbation or of pardon. Large representative assemblies have never been distinguished for freedom from caprice or passion; and to give to an assembly, constituted as they ever must be, an authority to disqualify a citizen for

* Cada cámara tiene el derecho de establecer los reglamentos que deba observar en sus sesiones, debates, y deliberaciones. Conforme á ellos podrá castigar á cualquiera de sus miembros que los infrinja, ó que de otra manera se haga culpable, con las penas que establezca; hasta expelerlos de su seno y declararlos indignos de obtener otros oficios de confianza, ó de honor en la República; cuando así se decida por el voto unánime de los dos tercios de los miembros presentes. *Art.* 56.

holding a seat in it, or for any other public station, is conferring a power unusual and dangerous. The worthiest citizen, in times of public excitement and party heat, might, by this parliamentary ostracism, be cut off from public usefulness for ever. And this power seems to be still more objectionable, when it is remembered, that expulsion may be, and frequently is, applied in punishment for offences, in no way infamous; and that expulsion generally takes place upon a single vote, without those delays of form and time, which are prescribed for the passage of ordinary laws. In this way some of the severest penalties of an attainder might be visited on a citizen, not by the legislative authority of his country, but by one branch of the legislature; a high punishment might be imposed without the sanction of a court of judicature, or any manner of judicial proceeding.

In the organization of the two houses, constituting the Congress of Colombia, other principles are admitted, which are liable to strong objections. The senator, or representative, is not necessarily a resident of the department or province which he represents; he is eligible not only from the department in which he resides, but also from the one in which he was born, although he may not have been in it since the days of his earliest infancy. That the representative should be an inhabitant of the state, or department for which he is chosen, seems essential to ensure most of the purposes of his election. Otherwise he may be a nominal and legal, but he cannot be a real representative of his constituents; he may bind them by his votes and his acts, but he cannot represent their feelings or interests. In a government embracing a great extent of territory, it is in vain to expect that the representative principle can be brought to its perfect practice, unless this principle of subdivision is also applied. If under the omission of this principle, it should happen that most of the members should come from the same part of the country, leaving some other parts without a resident deputy, there would result a manifest ignorance of the wants and situation of many of the citizens of the republic. And when this should occur even in one instance, a portion of the people would be left without that direct and immediate representation, which is essential to present, explain, and enforce their rights, because under such circumstances they could not be adequately felt or known. But it may be said, that the people themselves will create the best defence against such an evil, by not electing any one, who is not a resident of the district to be represented. The experience of

Colombia already contradicts this; cases have occurred in which this rule, so obvious and salutary, has been disregarded. An argument, which would go to show that local residence in the member might be safely dispensed with, under the idea that a sufficient security would always be found in the good sense of the people, would go too far; such an argument would prove, that all constitutional qualifications might be dispensed with, and that the knowledge possessed by the constituent of his own interests would protect him against an improper selection. Unfortunately all experience contradicts this; even when his good sense in the selection is aided by multiplied guards and qualifications, he is not always able to protect himself against an injudicious choice. This has been the opinion of the wisest statesmen. We see that the framers of all modern constitutions have thought it useful to declare, that the high officers of government, whether belonging to the executive or legislative department, should have prescribed qualifications either of age, residence, or citizenship. Although in a government, in which the principles of civil liberty are well understood, and education is generally diffused, it is known that great and just reliance can be placed on the judicious exercise of the elective franchise by the people, still he would be deemed a most adventurous politician, who should advise, that all constitutional qualifications should be dispensed with in the elected.

The example too of Great Britain proves to us, the necessity of chartered protection in this case. A very large portion of the members of the House of Commons are not residents of the districts for which they are chosen; this may not be regarded as a great inconvenience, where the whole territory embraced by the government is small, and the inhabitants of each part of it may be supposed to have a competent knowledge of the interests of the others; but it is cited to show the facility, with which elections may be secured by persons having no connexion, by residence, with the electors; and to show that the good sense of the people should never be considered above protection, by judicious constitutional guards.

There is another provision connected with this subject, which places the representative still farther from his constituents. It is declared 'that the senators and representatives hold their character for the nation, and not for the department, or province, which elects them; and that they are not to receive orders or instructions from the electoral assemblies, which can only pre-

sent petitions.' * It is not at all necessary to go into an examination of the propriety of such a provision in the constitution of the United States, or into the question whether such a principle exists without any special provision, as here the representative must be a resident of the state, and, in practice, is almost invariably a resident of the district, which elects him. Imperative instructions to a member, so intimately connected with his constituents by interest, feelings, and residence, could rarely be necessary. But in those cases, in which the representative resides beyond the limits of his department, or province, there seems to be no adequate mode of making him fully acquainted with the interests of his constituents, or indeed of securing anything like a just representation of them, but by subjecting him to mandatory instructions, on those occasions, which they may deem sufficiently important to require them. Where the residence is distant, and there can be no intimate knowledge of the concerns of the people, no very strong inducement to undertake or pursue them, and no constitutional mode of coercing obedience, there is left very little of the substance or theory of representation.

A principle still more objectionable has found admission into this constitution. In violation of that fundamental distribution of the supreme power, into the three great departments, legislative, executive, and judicial, which is declared in the usual language, officers belonging to one of those departments, may, also, with a few exceptions, be officers of either or both of the others. It is but just to state, that these exceptions embrace the President, Vice President, the different Secretaries, Intendants, and those other officers who may be excepted by law. The duties and the emoluments of the first station are suspended, on the acceptance of the second, but the office is not resigned, nor vacated, and may be resumed at pleasure. In this way an officer of the army, or of the customs, may be a foreign minister, or a member of Congress. This principle is fundamentally wrong, and particularly dangerous in its application to members of Congress. They should hold but one office; all other officers are subject to their legislation, and when they are legislating on the duration, annual salary, or contingent emoluments of an office

* Los senadores y representantes tienen este caracter por la nacion, y no por el departamento ó provincia que los nombra; ellos no pueden recibir órdenes ni instrucciones particulares de las asembleas electorales, que solo podrán presentarles peticiones. *Art.* 64.

of which they hold the ultimate ownership, and the duties of which they may immediately resume, they are acting for themselves. And, without supposing actual corruption, there is certainly an entire absence of that freedom from all improper temptation, which should exist.

In the Congress of Colombia, under the sanction of this clause, are many officers of the army, and several of the navy. The Vice President himself, who has almost ever since the organization of the government discharged the duties of the supreme Executive, is a general of division in the army; Commodore Padilla is a member of the Senate; and Sucré, the victor at Ayacucho, is a senator, general of division, and minister plenipotentiary to Peru. Although their military powers are entirely suspended, while they are discharging those civil functions, yet, whenever the interests, or supposed rights of the army or navy, become subjects of legislation, the people may well fear, that human infirmities will display themselves to their cost and injury. Under the most favorable circumstances, a victorious and unpaid army presents many dangers to its country, at the close of a revolution; but when the supreme legislation is in any degree in the hands of that army, there is ground for apprehension, that its permanent footing will be fixed on foundations, nowise favorable to that complete subordination to the civil authority, which is essential to the liberties of the people.

It is gratifying to know, however, that the civil duties, assumed by military men, have been so far discharged with great propriety, and apparent disinterestedness. A very wholesome jealousy of military influence has been diffused among the people, and the elections will go far towards correcting the palpable defect of the constitution. The admission of the military into the two houses of Congress has been ingeniously vindicated, upon the alleged necessity of opposing them, and their liberal opinions, to the influence and illiberality of the clergy. If the admission of the clergy was unavoidable, as it is said to have been, then, indeed, the objection against permitting officers of the army to have seats in the legislature, is much weakened. All the most liberal and judicious schemes, for the melioration of the country, have been supported by the military. They have been generally the advocates of abrogating the old monopolies and repealing the burdensome export duties, and have made some most salutary inroads upon the ancient system of tithes and

other ecclesiastical dues. Few will doubt, however, that the constitution should have interdicted the admission of the clergy, the military, and all others holding office, to seats within the walls of the Congress. In the constitution of the United States there is no such prohibition, as it regards the ministers of religion; nor was it at all necessary; we had no national religion, nor was there a probability that any particular sect would gain such a predominance, as to create a system of legislation favorable to itself, and burdensome to the body of the people. But in Colombia, although there is happily in the constitution an entire silence on the subject, yet there is in truth a national religion, supported in practice and by the ordinary laws as such. A numerous and powerful body of clergy is sustained, under the laws of the country, by taxes imposed upon the people, in the very burdensome shape of tithes.

In regard to this subject of eligibility to office, there is an extraordinary omission in the Colombian constitution. No provision is made for preventing a member of Congress from accepting an office, created during his term of service. In republican constitutions, it may justly be deemed an object of solicitude to free the mind of the representative from the hopes and fears, which may divert him from an independent devotedness to the interests of his constituents. One of the most obvious means of promoting this intellectual independence, is to make him ineligible during his term, to any public post created while he is in office. In the constitutions of several of the North American states, this salutary caution is carried so far, as to render the member ineligible for one year after the expiration of his term. This is considered as the perfection of the principle. In that case no inducement is held out to the representative, either immediate or remote, to desert the interests of those, whose interests should ever be regarded by him as superior to his own. The honor of a representative may be a sufficient safeguard against the desertion of his trust, but when you bind both his honor and his interest, you then have all the guaranties, that human prudence can give; and when the liberties of a people are involved, less than all should never be considered as enough.

The qualifications, which give the *right of suffrage* in Colombia, are the following. The individual must be a Colombian, native or naturalized; of the age of twentyone years, or be married; he must be able to read and write, although this

qualification is not to be demanded until the year 1840; he must have a real estate of the value of one hundred dollars, or have some office, profession, or trade, not being dependent on another as journeyman, or servant.

And the *right of suffrage is lost*, by taking any employment under another government without the leave of Congress; by any judicial sentence imposing an infamous punishment, until the individual is restored by law; by a person selling his vote, or buying that of another, either for himself or a third person.

And the exercise of *this right is suspended*, in lunatics; in vagabonds and insolvents, declared such by law; in all those against whom a criminal prosecution is depending, until they are acquitted, or condemned to a punishment not infamous; in debtors to the public treasury.

To be eligible to the *House of Representatives*, the candidate is required to have all the qualifications of a voter; to be at least twentyfive years of age; to be a resident, or native of the province for which he is elected; to have been a resident of the republic for the two years next preceding his election; to possess a real estate of the value of two thousand dollars, or have an annual income of five hundred dollars, or be a professor of some science. Those, who are not natives of Colombia, must have been resident eight years in the country, and have a real estate of the value of ten thousand dollars.

A *senator* is required to be thirty years of age; to be a resident, or native of the department for which he is elected; to have been a resident of the republic for the three years next preceding his election; to be owner of a real estate of the value of four thousand dollars, or to have an annual income of five hundred dollars, or to be a professor of some science. Those who are not natives of Colombia must have been resident twelve years in the country, and have a real estate of the value of sixteen thousand dollars.

The *President* and *Vice President* must, in addition to all the qualifications of a senator, be citizens of the republic by birth.

The *elections of members* of the two houses of Congress, and of the President and Vice President, are in no case made immediately by the people, but by electors chosen by them every four years. These electors assemble at a designated place in each province, and proceed to vote for a President, Vice President, four senators (the number to which each department is entitled), and as many representatives as the province, by its population, is

authorized to elect. In the case of the representatives, the balloting continues among the electors, until the requisite number shall have received a majority of all the votes given. But with regard to the other officers to be elected there is to be but a single ballot among the electors; the register of the vote is then sent to the Congress, and opened in the presence of both houses, and those persons, who, upon comparing the aggregate votes of the provinces, have the constitutional majority, are declared duly elected. When the full number, to be elected as senators, have not the required majority of the votes from the provinces composing one department, the members of both houses of Congress, voting *per capita*, elect the deficient number, one by one, from the three highest on the list.

In the *election of the President*, no one is considered as chosen, unless he have a majority of two thirds of all the votes given in the electoral colleges. When no person has received that majority, the President is elected by the Congress from the three candidates highest on the list. This mode differs in one essential point from that prescribed in the constitution of the United States, and in that difference it is unsusceptible of vindication. In requiring a vote of two thirds of the electors to secure the election, the influence of the people is greatly diminished, as the choice is almost certainly removed from them. In almost every case a resort must be made to the Congress; a course which is only to be justified, when there is a great diversity of opinion among the people, and which should never be thought of, when any one candidate has an absolute majority. The mode of election also differs, in allowing to each member of both houses one vote; this difference, however, results from the original difference in the frame of the government. Although the senators represent distinct departments, these departments are nothing more than convenient divisions of territory, created by the Congress, with none of the attributes of the states of the North.

The regulations with respect to the *election of the Vice President* are, in every particular, similar to those in the election of the President. Except when the Vice President is called on to administer the government, on account of the absence, or death of the first officer, he is a member of the Executive Council. He does not preside in the Senate.

The members of the House of Representatives continue in service for four, and the senators for eight years. The senators are so arranged that one half of that body is renewed every four

years. It is perhaps impossible to fix with precision the exact time of service, which is most favorable to the liberties of the people, and the proper independence of the representative; but it may be doubted whether the duration of the term, as designated in the constitution of the United States, could be increased, without removing the representative farther from the control of the people, than would be consistent with that responsibility, which he owes to them. So far, therefore, as there is a deviation from that term, it is believed that the Colombian constitution has failed in attaining the excellence of the other. In the election, too, of the members of the House of Representatives, the removal of the immediate choice from the people cannot be vindicated. The election of the popular branch of the legislature, directly by the people, has ever been deemed the simplest and the purest mode of selecting the members of that body. A just sense of their consequence in the government is infused into the people, only when they see, as the principal actors in it, those who derive their authority immediately from themselves, and with whom they have some personal acquaintance. Any system, which denies to the citizens of the commonwealth generally, all agency in the immediate election of their representatives, would go far towards estranging all feelings of favor from the government, would produce a dangerous indifference towards its administration, and ultimately cause them to regard it as a distant and alien one, which merited little care for its support and continuance.

The apportionment of representation is regulated by the following rule; every thirty thousand souls in each province entitles it to a member, until the number in the House of Representatives shall equal one hundred, but when there is an excess, or fraction, of fifteen thousand, an additional member is allowed to the province; when that given number in the representation of the house is reached, then forty thousand inhabitants is assumed as the ratio, until the number is increased to one hundred and fifty; and afterwards, fifty thousand souls are necessary for a member. This regulation is considered as a very happy one. It has the effect of preventing entirely that angry dissatisfaction which occurs whenever an apportionment of the representation takes place, produced by the apparently harsh operation, which the assumed standard must have in particular cases. When the rule is fixed in the constitution, there is nothing left for the legislature, but to apply it. This regulation has the effect, too, of postponing,

for a great number of years, the time at which the House of Representatives can arrive at an inconvenient number. The provision would have been greatly improved, however, by fixing a maximum, beyond which the number could not in any event go.

The republic is divided into twelve departments, each of which is entitled to four senators.

The *power of impeaching* is in the House of Representatives, and that of trial in the Senate, who convict upon a vote of two thirds. When the Senate is sitting as a court of impeachment, it may call upon the members of the high court of justice to assist it on judicial points.

The rules, which govern the houses in the discharge of their legislative duties, are such as are usually observed in assemblies of that kind. The Congress meets on the second day of January each year. The session can only continue for ninety days, unless it is prolonged for thirty days more by a vote of both houses; beyond that period the session cannot be continued. The President can convoke both houses, whenever he may think the public service requires it.

The attributes and duties of the Executive do not materially differ, from those assigned by the constitution of the United States to the President. The power of putting the negative on the passage of a law is the same, except that in Colombia, when a bill has passed both houses as *urgent*, it must be signed, or returned by the Executive within two, instead of ten days. The President of Colombia can, in cases of capital conviction, pardon or commute the punishment, only in concurrence with the judges who presided at the trial. He may suspend from their employment any unfit or delinquent officer, but must forthwith give advice thereof, and the reasons of his proceeding, to the proper tribunal for prosecuting or impeaching. He cannot command the army in person, unless with the assent of the Congress, and in that case, the civil duties of the Executive are to be immediately assumed by the Vice President. He cannot go beyond the territory of the republic, during his presidency, nor for one year thereafter, without the leave of the Congress.

An *Executive Council* is provided by the constitution, composed of the Vice President, one of the judges of the high court of justice, and the four Secretaries. The President is authorized to take their advice on all subjects, on which he may require it; but he is imperatively required to take their written opinions in the following cases, namely; in the consideration of

a bill, which has passed the Congress, and is presented to him for his signature; in taking the preparatory measures for conducting a war; in nominating to the Senate foreign ministers and military officers; in making all appointments in the recess of the Senate; in suspending an officer for unfitness or improper conduct; in granting pardons; and in declaring martial law, which he is authorized to do in case of insurrection, or sudden invasion, in which case the Congress is to be immediately convened. The President is, however, not obliged to follow their advice in any case; but a register of all their opinions is to be preserved, and presented annually to the Senate for their examination.

The creation of this Council was no doubt designed to aid the Executive in the discharge of his high duties, and also to operate as a check on any wilful or capricious exercise of his powers. The necessity of keeping a record of those opinions, and particularly the obligation to present a copy of them every year to one branch of the legislature, will go far towards preventing any violent or corrupt conduct in the Executive; and especially when it is known, that each member of the Council holds his office by a tenure entirely beyond the control of the President. All of them, except the Vice President, owe their original appointment to his nomination, but none of them are removeable by him. Notwithstanding these apparent advantages in the organization and power of the Council, in preventing the adoption of hasty and unconstitutional measures, it may well be doubted, whether the tendency of it, under its present organization, be not more injurious than beneficial to the public affairs. Any system, which compels the Executive to receive, and submit to the Congress, the opinions of those who are not responsible to him, must have an unhappy effect upon the exercise of his public functions. He is at last the responsible person to the nation, and to the Congress, for the measures which he shall adopt, and, under the virtual control of an irresponsible Council, his mind cannot be so independent and free to pursue its own dictates, as it will be, when he is held to answer for every thing which is done or omitted. When an officer is not permitted to protect himself under the advice which he receives, more injury than good will result from compelling him to hear it, especially when he is farther compelled to promulgate it.

The *Secretaries* are required to give to the Congress, upon the order of either house, written or oral expositions on all subjects connected with their departments. This power is frequently

used by the Congress; the Secretary of Foreign Affairs is called on, to give explanations of the views of the Executive upon subjects of foreign negotiation, and to vindicate the policy of treaties and other conventions, offered for the ratification of Congress, whenever it is thought necessary. The other secretaries are also frequently introduced under the order of the house, to explain anything within their duties, that may not be understood or approved.

With regard to the foundation, on which the *Judiciary* is placed, no particular observation is necessary. The Judges hold their office during good behavior, and receive a fixed annual salary. In the appointment of them, however, a mode is pursued somewhat unusual, and designed to ensure the most unexceptionable selections. Three persons are nominated by the President to the House of Representatives, the house reduces the number to two, and presents them to the Senate, from whom that body designates the judge.

For purposes of internal administration, the republic is divided into *Departments*, the number of which is to be regulated by Congress. Over each of these an officer presides, denominated an Intendant. Each department is divided into *Provinces*, over which a Governor presides. These provinces are again divided into *Cantons*, and these into *Parishes*. In these are officers denominated Alcaldes, answering very much to justices of the peace in countries where the common law prevails. The Alcaldes have jurisdiction, not only in judicial matters of small amount, but also in matters of police.

As the powers of the government of Colombia do not depend, for their existence or extent, upon any specific grant in the constitution, but all are embraced, according to its theory, which are not positively denied to it, the list of interdicted powers becomes much more important, than the corresponding interdictions in the constitution of the United States, where they have been introduced, not as essentially necessary, but only through abundant caution. The constitution opens with a declaration indicative of the sense, which its framers had, of the magnitude of their duties, and of the high situation in which they stood;

'We the representatives of the people of Colombia in General Congress assembled, fulfilling the wishes of our constituents, to fix the fundamental rules of their union, and to establish a form of government, which may secure to them the blessings of liberty,

security, property, and equality, so far as it is given to a nation so to do, which is commencing its political career, and is as yet struggling for its existence, do ordain and declare the following CONSTITUTION.

'The Colombian nation is forever and irrevocably free and independent of the monarchy of Spain, and of every other foreign potentate or power; nor is it, nor shall it ever be, the patrimony of any person or family.

'The sovereignty resides essentially in the nation. The magistrates and officers of government invested with any kind of authority, are its agents or deputies, responsible to it for their public conduct.

'It is the duty of every Colombian to live obedient to the constitution and the laws; to respect and obey the authorities, which are its organs; to contribute to the public expenses; to be ready at all times to serve and defend his country, and to make to it the sacrifice of his property, and of his life, if it be necessary.'

We here present the substance of some of the provisions, intended to secure the rights of person and property to the citizen, against all attacks from the constituted authorities, as they are found under the *eighth title* of the constitution.

'Every Colombian has a right freely to write, print, and publish his thoughts and opinions, without any previous examination or revision, he being responsible to the laws for the abuse of this precious liberty.

'The liberty, which every citizen has of claiming his rights before the proper tribunals, shall never be obstructed or limited; on the contrary, he shall find a prompt and secure remedy in the laws for any losses, or injuries, he may sustain in his person, his property, his honor, or his reputation.

'Every person shall be presumed innocent, until declared guilty according to law; and if it shall be previously necessary to arrest him, no more rigor shall be used, than is indispensable for securing his person.

'No person shall be seized, or imprisoned, unless by virtue of a warrant signed by the magistrate, to whom the law gives this authority; the warrant shall express the grounds of the arrest; and a copy of it shall be delivered to the prisoner,

'No jailer or other officer shall receive or detain in prison any one whatever, unless under a warrant issued and signed as above.

'All persons shall be deemed guilty of the crime of *arbitrary detention*, and shall be punished according to law, who shall arrest, or cause any one to be arrested, without legal authority.

'No one shall be tried by special commissions, except by the ordinary tribunals established by law.

'No one shall be judged, much less punished, except by virtue of a law passed anterior to the crime, or offence, and after having been heard in his defence, or legally cited; nor shall any one be obliged or admitted, in a criminal case, to give evidence against himself.

'No house shall be subject to search, except in cases determined by law, and under the responsibility of the judge who issues the order.

'The private papers of individuals, and their correspondence, shall be inviolable, and shall not be liable to examination, or to be intercepted, except in cases expressly prescribed by law.

'The infamy of punishment shall not be visited by law upon the family or relations of the offender.

'No one, but those who are in the army or navy, or in the militia when in actual service, shall be subject to military law, or suffer the punishments provided by it.

'Entails are prohibited.

'All titles of honor granted by the Spanish government are abolished; Congress shall not grant any title of nobility, or hereditary distinction; nor create any office or employment, where the salary or emolument shall continue longer than the good conduct of those who serve in them.

'No one, who enjoys any post of trust or honor under the republic, shall accept any title, gift, or emolument from any king, prince, or foreign state, without the consent of the Congress.

'No money shall be drawn from the public treasury, except for objects fixed by law; and there shall be published every year, a regular statement of the receipts and expenditures, for the information of the people.

'All foreigners shall be admitted into Colombia, of whatever nation they may be; and they shall enjoy in their property and persons the same security as citizens, so long as they respect the laws.

'One of the first duties of the Congress shall be to introduce, in some cases, the trial by jury; and when the advantages of the institution are well understood, it shall be applied to all cases civil and criminal, in which it is commonly used in other nations.'

The language of this last clause is somewhat vague. It seems, however, to have been intended to require of the Congress imperatively to introduce the system in some particular case, and that when the practice and proceedings under it should become familiar and well understood, it should be generally introduced.

In this way the clause has been interpreted by the Congress, and law was passed at the first session, providing for the trial by jury in all cases of prosecution for libel. The system has not yet been applied to any other case; but many will be of opinion, that 'the advantages of the institution are well understood' already, when it is stated, that in every prosecution for a libel, which has yet occurred in the republic, *the prisoner has been acquitted.*

ART. VI.—*A Manual of Chemistry, on the Basis of Professor Brande's; containing the principal Facts of the Science, arranged in the Order in which they are discussed and illustrated in the Lectures at Harvard University, N. E. Compiled from the works of Brande, Henry, Berzelius, Thomson, and others. Designed as a Text Book, for the use of Students and Persons attending Lectures on Chemistry.* By JOHN W. WEBSTER, M. D. Lecturer on Chemistry in Harvard University. 8vo. pp. 603. Boston. 1826. Richardson & Lord.

THE multiplication of treatises on chemistry, within a few years, has been remarkable, both in Europe and in our own country. Not only have many new works appeared, but new editions of the standard works have been sent out with great rapidity; and the student is not a little embarrassed in his choice of those, upon which he shall first fix his attention. While this increase of chemical works is an evidence of increased attention to the science, it further shows what quick advances have been made, and are still making in it. And this demand for new works, and new editions of the same work, is a consequence of rapid discoveries and improvements, no less than of the increasing attention bestowed on those arts of life, which involve chemical principles, and which are advancing towards perfection, in the same path as the science upon which they are founded. There is no science in which more frequent and important discoveries are making than in this, and none in which the revision of former opinions is so often demanded; bearing, as they do, on the arts of life and wants of the community. With the enlargement